TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 331

THE UNITED STATES OF AMERICA, PETITIONER

vs.

A. B. LEACH & CO., INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 1, 1936

CERTIORARI GRANTED, OCTOBER 19, 1936

SUPREME COURT OF THE UNITED STATES

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[Placita omitted in printing.]

In United States District Court, Northern District of Illinois, Eastern Division

No. 42612

A. B. LEACH & CO., INC., A CORPORATION, PETITIONER

vs.

UNITED STATES OF AMERICA, RESPONDENT

Petitioner's declaration

Filed Sept. 11, 1933

To the Honorable, the Judges of the District Court of the United States for the Northern District of Illinois, Eastern Division:

I

Your petitioner, A. B. Leach & Co., Inc., complains to the United States of America in a plea of trespass on the case upon promises, to recover internal revenue taxes illegally assessed, which your petitioner aforementioned alleges it was illegally and erroneously compelled to pay to the United States of America under duress, as hereinafter mentioned.

II

Your petitioner alleges that it is a corporation duly organized under the laws of the State of New York in April 1917 and
3 duly licensed to do business in the State of Illinois in July 1917 under the name of A. B. Leach & Co., Inc., and has so conducted business under said name until April 1932, from which time said corporation has been and is now in process of liquidation; that while actively engaged in business it sold stocks, bonds, and other securities to the general public for investment.

III

Your petitioner further alleges that in the month of August 1931 the United States Commissioner of Internal Revenue at Washington, D. C., made an illegal, erroneous, and void assessment against petitioner, amounting to Four thousand nine hundred ninety four dollars ($4,994.00), representing stamp tax on the alleged transfer by petitioner to one George I. Vercouter of the right to receive certain shares of Henney Motor Company and its successor company, Allied Motor Industries, Inc., as follows, to-wit:

Date	Number of shares	Name of Company	Par Val.	Tax
12- 9-27	30,000 Common	Henney Motor	No Par	$600.00
12- 9-27	16,500 Pref.	Henney Motor	No Par	330.00
12-28-27	91,500 Common	Henney Motor	No Par	1,830.00
9-25-28	19,700 Common	Henney Motor	No Par	394.00
10-10-28	7,500 Common	Henney Motor	No Par	150.00
12-15-28	7,500 Common	Henney Motor	No Par	150.00
12-31-28	33,000 Common	Allied Motors, Ind	No Par	660.00
12-31-28	3,000 Common	Allied Motors, Ind	No Par	60.00
12-31-28	1,000 Common	Allied Motors, Ind	No Par	20.00
1-30-29	10,000 Common	Allied Motors, Ind	No Par	200.00
6- 1-29	10,000 Common	Allied Motors, Ind	No Par	200.00
7-19-29	20,000 Common	Allied Motors, Ind	No Par	400.00
				4,994.00

that on account of said illegal, erroneous, and void assessment petitioner paid on December 1, 1931, to the Collector of Internal Revenue, First District of Illinois, located at Chicago, Illinois, the sum of Four thousand nine hundred ninety four dollars ($4,994.00), which said payment was made by petitioner, A. B. Leach & Co., Inc., to the respondent under protest; that in the month of August, 1931,

4 the United States Commissioner of Internal Revenue at Washington, D. C., made an illegal, erroneous, and void assessment against petitioner amounting to the sum of Two thousand dollars ($2,000.00), representing stamp tax on the alleged transfer by petitioner to one George I. Vercouter of the right to receive One hundred thousand shares of Participating Class "A" stock of Mid-Continent Laundries, Inc.; that on account of said illegal, erroneous, and void assessment petitioner paid on December 1, 1931, to the Collector of Internal Revenue, First District of Illinois, located at Chicago, Illinois, the sum of Two thousand dollars ($2,000.00), which said payment was made by the petitioner, A. B. Leach & Co., Inc., to the respondent under protest; that in the month of September 1931 the United States Commissioner of Internal Revenue at Washington, D. C., made an illegal, erroneous, and void assessment against petitioner amounting to the sum of Thirteen hundred dollars ($1,300.00), representing stamp tax on the alleged transfer by petitioner to one George I. Vercouter of the right to receive sixty-five thousand shares of Class "A" stock of the Van Sicklen Corporation; that on account of said illegal, erroneous, and void assessment petitioner paid on January 2, 1932, to the Collector of Internal Revenue, First District of Illinois, located at Chicago, Illinois, the sum of Thirteen hundred dollars ($1,300.00), which said payment was made by the petitioner, A. B. Leach & Co., Inc., to the respondent under protest; that in the month of September 1931 the United States Commissioner of Internal Revenue at Washington, D. C., made an illegal, erroneous, and void assessment against petitioner amounting to the sum of Eight thousand dollars ($8,000.00), representing stamp tax on the alleged transfer by petitioner to one George I. Vercouter of the right to receive three hundred thousand shares of Class "A" stock and one hundred thousand shares of Class "B" stock of the Great Lakes Aircraft Corporation; that on account of said illegal, errone-

ous, and void assessment, petitioner paid on January 2, 1932, to the Collector of Internal Revenue, First District of Illinois, located at Chicago, Illinois, the sum of Eight thousand dollars ($8,000.00), which said payment was made by the petitioner, A. B. Leach & Co., Inc., to the respondent under protest; that in the month of September 1931 the United States Commissioner of Internal Revenue of Washington, D. C., made an erroneous, illegal, and void assessment against petitioner amounting to the sum of Two hundred thirty two and $^{40}/_{100}$ Dollars ($232.40), representing stamp tax on the alleged transfer by petitioner to one George T. Vercouter of the right to receive eleven thousand six hundred twenty warrants to subscribe for Partieipating Class "A" stock of Mid-Continent Laundries, Inc.; that on account of said illegal, erroneous, and void assessment, petitioner paid on January 2, 1932, to the Collector of Internal Revenue, First District of Illinois, located at Chicago, Illinois, the sum of Two hundred thirty two and $^{40}/_{100}$ Dollars ($232.40), which said payment was made by the petitioner, A. B. Leach & Co., Inc., to respondent under protest.

IV

Your petitioner further alleges that said illegal, erroneous, and void assessments were made by the respondent under Schedule A–3, Title 8 of the Revenue Act of 1926, assessing a tax of two cents on each $100.00 of face value or fraction thereof, on all sales, or agreements to sell or memoranda of sales or deliveries of, or transfers of legal title to shares or certificates of stock or of profits or of interest in property or accumulations in any corporation, or to rights to subscribe for or to receive such shares or certificates, whether made upon or shown by the books of the corporation, or by any assignment in blank, or by any delivery, or any paper or agreement or memorandum or other evidence of transfer or sale, whether entitling the holder in any manner to the benefit of such stock, interest or rights, or not.

V

Your petitioner alleges that the corporations specified in Paragraph III hereof, namely, Henney Motor Company, its successor, Allied Motor Industries, Inc., Mid-Continent Laundries, Inc., Van Sicklen Corporation, and Great Lakes Aircraft Corporation were organized by your petitioner, A. B. Leach & Co., Inc., and that upon the organization of said corporations, your petitioner subscribed for all of the capital stock specified in said Paragraph III hereof, said capital stock being the original issue of said corporations, and your petitioner paid thereon a stamp tax of five cents on each share as required under Schedule A–2, Title 8 of the Revenue Act of 1926; that immediately on the completion of the organization of said corporations, the said stock so subscribed for was issued in the

6 name of said George I. Vercouter; that said George I. Vercouter was the mere employe and agent of your petitioner, appointed to receive and hold the capital stock of said corporations as specified in Paragraph III hereof for the sole and exclusive benefit of your petitioner, and for its convenience in connection with future sales and transfers of said stock to the public; that by virtue of the foregoing, the subscription of said stock by your petitioner and the issuance thereof in the name of said George I. Vercouter, constituted but one transaction, taxable only under Schedule A–2, Title 8 of the Revenue Act of 1926, relating to original issues of stock; and that said Schedule A–3, Title 8 of the Revenue Act of 1926, under which the taxes sought to be refunded were assessed, has no application to the transaction above recited.

VI

Your petitioner alleges that because of the facts above stated no stamp tax was authorized by law upon the alleged transfer by your petitioner to the said George I. Vercouter of the right to receive said stock and that the assessments were illegal, erroneous, and void.

VII

Your petitioner alleges that on, to-wit, October 8, 1932, petitioner duly filed with the Collector of Internal Revenue at Chicago, Illinois, on Forms No. 843, according to the provision of the law in that regard and the regulations of the Secretary of the Treasury established in pursuance thereof, claims for refund of said taxes so illegally and erroneously assessed and collected from it; that on the 18th day of March 1933 the Commissioner of Internal Revenue made a final decision denying the said claims for refund and in a letter of that date so informed your petitioner.

VIII

Your petitioner further alleges that the Collector of Internal Revenue now in office is one Gregory T. Van Meter, which Collector is not the same individual that was in office at the time of the payment of the taxes aforementioned by your petitioner during the years 1931 and 1932.

IX

Your petitioner contends that the action of the Commissioner of Internal Revenue in not allowing the full refund of Four thousand nine hundred ninety-four dollars ($4,994.00), Two thousand dollars ($2,000.00), Thirteen hundred dollars ($1,300.00), Eight thousand dollars ($8,000.00), and Two hundred thirty-two and 40/100 Dollars ($232.40), respectively, as per its letter under date of March 18, 1933, on the ground that petitioner subscribed for the stock involved and

directed that it be issued in the name of its nominee; that the nominee therefore received the legal title to the stock which petitioner had the right to receive and such transfer of the right to receive is subject to the tax, is arbitrary, illegal, and unwarranted.

Wherefore your petitioner prays that judgment may be entered upon the facts and the law in the premises in the amount of Sixteen thousand five hundred twenty-six and 40/100 Dollars ($16,526.40), with interest from the date of payment as provided by the provisions of the Revenue Act of 1928, now in force and effect, relating to interest on tax refunds; and your petitioner further prays that such further relief should be allowed the petitioner as to this Honorable Court may seem just and equitable under the premises.

A. B. LEACH & CO., INC.,
By H. ALLPORT,
Petitioner.

[Duly sworn to by H. Allport; jurat omitted in printing.]

8 In United States District Court

Demurrer

Filed Dec. 9, 1933

And the defendant, the United States of America, by Dwight H. Green, United States Attorney for the Northern District of Illinois, its attorney, comes and defends, etc., when, etc., and says that the said petition or declaration and the matters therein contained in manner and form as the above are set forth are not sufficient in law for the plaintiff to maintain its aforesaid action, and that it, the defendant, is not bound by law to answer the same, and this it is ready to verify.

DWIGHT H. GREEN,
United States Attorney for the Northern District of Illinois.

In United States District Court

Memorandum

Filed July 16, 1935

On the authority of Union Trust Co. v. Heiner, 26 Fed. (2d) 391, Dean v. Caldwell & Co., 9 Fed. Supp. 177, and Consolidated Equities, Inc. v. White, 7 Fed. Supp. 851, the court is of the opinion that the plaintiff should recover.

WILLIAM H. HOLLY,
U. S. District Judge.

9 In United States District Court

Judgment

Entered Nov. 22, 1935

This cause having come on to be heard upon complaint of Petitioner and the demurrer thereto filed by the Respondent, and the cause having been submitted to the Court as an issue of law developed in oral argument and in briefs filed by the respective parties, and the Court having carefully considered the allegations of said complaint, and the facts involved in the claim of the Petitioner as presented to the Court in said pleadings and in the oral argument and in the briefs as filed, and the Court having filed herein its written opinion concluding that the Petitioner is entitled to a recovery in accordance with the prayer of its petition, and the Defendant having elected in open Court to stand on the record, and having declined to plead further, and the merits of the claim of the Petitioner having been satisfactorily established before the Court, and the Court being otherwise fully informed in the Premises,

It is Hereby Ordered, Adjudged And Decreed that the Petitioner do have and recover of the Defendant the sum of Sixteen Thousand Five Hundred Twenty-Six and 40/100 Dollars ($16,526.40) together with interest at the rate of six per cent (6%) per annum from December 1, 1931 on Six Thousand Nine Hundred Ninety-four Dollars ($6,994) and from January 2, 1932, on Nine Thousand Five Hundred Thirty-Two and 40/100 Dollars ($9,532.40) to a date preceding the date of the refund check by not more than thirty days, such date to be determined by the Commissioner of Internal Revenue, to the entry of which the Defendant is allowed an exception.

Enter:

WILLIAM H. HOLLY,
Judge of the United States District Court.

10 In United States District Court

Respondent's exceptions

Filed Dec. 3, 1935

Comes now the respondent, United States of America, by its attorney, Michael L. Igoe, United States Attorney for the Northern District of Illinois, Eastern Division, and files its written exceptions to the refusal and failure of the Court to enter its order in the above entitled cause sustaining respondent's demurrer to petitioner's declaration and dismissing such declaration at petitioner's costs, and to the order of judgment entered herein by the Court in favor of the petitioner and against the respondent on November 22, 1935, as follows:

I

Respondent excepts to the refusal and failure of the Court to enter its order in the above entitled cause sustaining respondent's demurrer to petitioner's declaration and dismissing such declaration at petitioner's costs, on the ground that:

Petitioner's declaration fails to allege facts sufficient to constitute a cause of action against respondent, in that the facts alleged in petitioner's declaration, if admitted, are not sufficient to constitute a cause of action against respondent, or sustain a conclusion of law that petitioner is entitled to a recovery in accordance with the prayer of its petition, or a judgment in any sum against respondent.

II

Respondent excepts to the order of the Court, entered in the above entitled cause, if any, overruling respondent's demurrer to petitioner's declaration on the ground that:

Petitioner's declaration fails to allege facts sufficient to constitute a cause of action against respondent, in that the facts alleged in petitioner's declaration are not sufficient to sustain the conclu-
11 sion of law, "that the petitioner is entitled to a recovery in accordance with the prayer of its petition," or the judgment entered in favor of petitioner and against the respondent on November 22, 1935.

III

Respondent excepts to the order of judgment, entered in the above entitled cause on November 22, 1935, against respondent and in favor of the petitioner in the sum of $16,526.40 and interest as therein provided, in that such judgment is not supported or sustained by the facts alleged in petitioner's declaration.

IV

Respondent excepts to the order of judgment, entered in the above entitled cause on November 22, 1935, against respondent and in favor of the petitioner in the sum of $16,526.40 and interest as therein provided, in that such judgment is predicated upon the erroneous conclusion, "that the petitioner is entitled to a recovery in accordance with the prayer of its petition", and the allegations of fact set forth in petitioner's declaration admittedly show that transfers of legal title to, or rights to receive legal title to, shares or certificates of stock, or of interests in property, or accumulations, in the corporations mentioned in such declaration, or to rights to subscribe for, or to receive, such shares or certificates, are involved and were effected by the parties to the transactions described therein, within the purview of Section 800 and Schedule A–3, Title VIII, of the Revenue Act of 1926.

V

Respondent excepts to the order of judgment, entered on November 22, 1935, against respondent, in that such judgment is not supported by any proof of the facts alleged as required by the provisions of Section 763, Title 28, United States Code (24 Stat. 506).

VI

Respondent excepts to the order of judgment, entered on November 22, 1935, against respondent and in favor of the petitioner,
12 in the sum of $16,526.40 and interest as therein provided, in that such judgment is not supported by any findings of fact and conclusions of law as required by the provisions of Section 764, Title 28, United States Code (24 Stat. 506).

VII

Defendant excepts to the order of judgment, entered on November 22, 1935, against respondent and in favor of petitioner, in that the conclusion, "that petitioner is entitled to a recovery in accordance with the prayer of its petition", is not sufficient to sustain such judgment against respondent in any sum.

M. L. IGOE,
United States Attorney.

In United States District Court

Motion to vacate

Filed Dec. 5, 1935

Comes now the respondent, United States of America, by its attorney, Michael L. Igoe, United States Attorney for the Northern District of Illinois, Eastern Division, and moves the Court to vacate and set aside the order of judgment, entered in the above entitled cause November 22, 1935, in favor of the petitioner and against the respondent, and to enter judgment herein in favor of the respondent and against the petitioner, dismissing petitioner's declaration at petitioner's costs, on each of the following grounds:

I

The judgment, entered on November 22, 1935, in favor of the petitioner and against the respondent in the sum of $16,526.40 and interest as therein provided, is not supported by the facts alleged in petitioner's declaration.

13 II

The allegations of fact set forth in petitioner's declaration are not sufficient to sustain the judgment, entered on November 22, 1935, in favor of the petitioner and against the respondent, United States of America, in any sum.

III

The judgment, entered on November 22, 1935, in favor of petitioner and against respondent is predicated upon the erroneous conclusion, "that the petitioner is entitled to a recovery in accordance with the prayer of its petition", in that the allegations of fact set forth in petitioner's declaration admittedly show that transfers of legal title to, or rights to receive legal title to, shares or certificates of stock, or of interests in property, or accumulations, in the corporations mentioned in such declaration, or to rights to subscribe for, or to receive, such shares or certificates, are involved and were effected by the parties to the transactions described therein.

IV

The judgment entered in favor of petitioner and against respondent is not supported by any proof the facts alleged as required by the provisions of Section 763, Title 28, United States Code (24 Stat. 506).

V

The judgment entered in favor of petitioner and against respondent is not supported by any findings of fact and conclusions of law as required by the provisions of Section 764, Title 28, United States Code (24 Stat. 506).

VI

The conclusion of law, "that petitioner is entitled to a recovery in accordance with the prayer of its petition", is not sufficient to sustain the order of judgment, entered herein on November 22, 1935, against respondent in any sum.

M. L. IGOE,
United States Attorney.

14 CITATIONS

In support of the above motion, the respondent cites the following case: Raybestos-Manhattan, Inc., v. United States, decided by United States Supreme Court on November 11, 1935, not yet officially reported, but found in Prentice-Hall, 1935, Vol. 1, p. 2173; F. T. Dooley Lumber Co. v. United States, 63 F. (2d) (C. C. A. 8th), Certiorari denied, 290 U. S. 640; United States v. Phillips, 24 F. (2d) 195 (C. C. A. 3d); United States v. Tisdale, 114 Fed. 883 (C. C. A. 5th); and United States v. Kelly, 89 Fed. 946 (C. C. A. 9th).

In the event the Court overrules the above motion to vacate the judgment entered on November 22, 1935, respondent requests that it be allowed exceptions to such ruling on each of the grounds set forth in the above motion.

In United States District Court

Order overruling motion to vacate

(Dec. 5, 1935)

This day comes the United States of America by the United States Attorney and enters herein its motion to vacate and set aside the judgment entered herein November 22 A. D. 1935, and to enter a judgment in favor of the Respondent and against the Petitioner and to dismiss this cause at Petitioner's costs, which motion is overruled and denied, to which ruling of the Court the United States of America by the United States Attorney duly excepts.

15 In United States District Court

Notice of appeal

Filed Dec. 6, 1935

To E. J. BLAIR, Esq., 1213,
#77 W. Washington St.,
BOWDEN & HEFFERNAN, 2800,
105 W. Adams Street,
Chicago, Illinois.

The defendant, the United States of America, hereby serves its notice that it will appeal from the decision or judgment entered in the above-entitled cause on November 22, 1935.

M. L. Igoe
M. L. IGOE,
United States Attorney.

Received a copy of the above and foregoing Notice of Appeal this 6 day of December, A. D. 1935.

E. J. Blair
E. J. BLAIR.
GEO. K. BOWDEN
BOWDEN & HEFFERNAN.

In United States District Court

Petition for appeal

Filed Dec. 6, 1935

To the Honorable William H. Holly, Judge of the District Court aforesaid.

The respondent, United States of America, by its Attorney, Michael L. Igoe, United States Attorney for the Northern District of Illinois, Eastern Division, respectively shows that on the 22nd day of November, A. D. 1935, a final judgment was entered against your

petitioner, United States of America, and in favor of A. B. Leach & Co., in the sum of $16,526.40, together with interest at
16 the rate of 6% per annum on $6,994.00 from December 1, 1931, and on $9,532.40 from January 2, 1932, as provided by statute.

This is a suit to recover an internal revenue tax, wherein the laws of Congress providing for internal revenue are involved, tried in conformity with the provisions of the Act of Congress of March 3, 1867, c. 359, Sec. 1 and 2; 24 Stat. 505; Section 41 (20), Title 28, United States Code, and this case is one in which under the legislation and laws of the United States in force when the Act of Congress of January 31, 1928 (28 U. S. C. A., Section 861 (a) and 861 (b) was passed, a review could be had on writ of error.

Your petitioner feeling itself aggrieved by said judgment, as aforesaid, hereby petitions the Court for an order allowing an appeal to the Circuit Court of Appeals of the United States for the Seventh Circuit under the laws of the United States in such cases made and provided for the reasons specified in the assignment of errors filed herewith.

Wherefore your petitioner prays that a citation issue to A. B. Leach & Co., Inc., petitioner in the above entitled cause, and its Attorneys of record, that an appeal, on behalf of United States of America, respondent in the above entitled cause, to the United States Circuit Court of Appeals for the Seventh Circuit, sitting at Chicago, Illinois, in said circuit for the correction of the errors complained of and herewith assigned, be allowed, without bond as provided by law, and that an order be entered suspending all further proceedings herein until the determination of said appeal by such Circuit Court of Appeals.

Dated this 6 day of December, A. D. 1935.

M. L. IGOE,
United States Attorney.

17 In United States District Court

Assignment of errors

Filed Dec. 6, 1935

Now comes the United States of America, respondent in error in the above entitled cause, by its Attorney, Michael L. Igoe, United States Attorney for the Northern District of Illinois, Eastern Division, and in connection with its petition for appeal in this cause assigns the following errors which respondent in error avers occurred on the trial thereof, and upon which it relies to reverse the judgment entered herein as appears of record:

I

The Court erred in refusing and failing to enter its order sustaining respondent's demurrer to petitioner's declaration and dismissing such declaration at petitioner's costs on the ground that "petitioner's

declaration fails to allege facts sufficient to constitute a cause of action against respondent", in that the facts alleged in petitioner's declaration, if admitted, are not sufficient to constitute a cause of action against respondent, or sustain a conclusion entitling petitioner to a recovery in accordance with the prayer of its petition, or a judgment in any sum against respondent.

II

The Court erred in entering its order, if any, overruling respondent's demurrer to petitioner's declaration on the ground "that petitioner's declaration fails to allege facts sufficient to constitute a cause of action against respondent", in that the facts alleged in petitioner's declaration are not sufficient to sustain a conclusion of law entitling petitioner to a recovery in accordance with the prayer of its petition, or the judgment entered in favor of petitioner and against respondent on November 22, 1935.

III

The Court erred in entering judgment against respondent and in favor of the petitioner in the sum of $16,526.40 and interest
18 as therein provided, in that such judgment is not supported or sustained by the facts alleged in petitioner's declaration.

IV

The Court erred in entering judgment against respondent and in favor of the petitioner, in that such judgment is predicated upon an erroneous conclusion "that the petitioner is entitled to a recovery in accordance with the prayer of its petition", and the allegations of fact set forth in petitioner's declaration admittedly show that transfers of legal title to, or rights to receive legal title, shares or certificates of stock, or of interests in property or accumulations, in the corporations mentioned in such declaration, or to rights to subscribe for or to receive such shares or certificates, are involved and were effected by the parties to the transactions described therein, within the purview of Section 800 and Schedule A–3, Title VIII, of the Revenue Act of 1926.

V

The Court erred in entering judgment against respondent and in favor of petitioner, in that such judgment is not supported by any proof of the facts alleged, as required by the provisions of Section 763, Title 28, United States Code.

VI

The Court erred in entering judgment against respondent and in favor of the petitioner, in that such judgment is not supported by any findings of fact and conclusions of law, as required by the provisions of Section 764, Title 28, United States Code.

VII

The Court erred in entering judgment against respondent and in favor of petitioner, in that the conclusion "that petitioner is entitled to a recovery in accordance with the prayer of its petition" is not sufficient to sustain such judgment against respondent.

VIII

The Court erred in entering judgment against respondent and
19 in favor of petitioner, in that the facts alleged in petitioner's declaration are not sufficient to sustain the judgment entered on November 22, 1935, in favor of petitioner and against respondent in any sum.

Wherefore respondent in error prays that the judgment of said Court be reversed and that this cause be remanded to said Court with instructions to enter judgment therein in favor of respondent and against petitioner, dismissing petitioner's declaration at petitioner's costs.

M. L. Igoe.
United States Attorney.

In United States District Court

Order allowing appeal

Entered Dec. 6, 1935

It appearing that the respondent, United States of America, in the above entitled cause has filed in this Court a petition for an appeal from the final judgment entered herein, dated November 22, 1935, together with an assignment of errors and prayer for reversal, it is hereby ordered that an appeal as prayed for in said petition be, and it is hereby, allowed, without bond as provided by law, and that all further proceedings in this Court be stayed until the determination of said appeal.

Dated this 6th day of December, A. D. 1935.

William H. Holly,
United States District Judge.

20 In United States District Court

Praecipe for transcript of record

Filed Dec. 11, 1935

To Henry W. Freeman, Esq.,
Clerk of the U. S. District Court,
Northern District of Illinois:

You will please prepare a transcript of the record in the above-entitled cause, to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, under the

appeal heretofore allowed in said cause, and include in said transcript the following:

1. Placita.
2. Petitioner's declaration, filed September 11, 1933.
3. Demurrer of defendant, December 9, 1933.
4. Order entered November 22, 1935—Defendant elects to stand on record, petitioner to recover $16,576.40 and interest, and excepts.
5. Defendant's exceptions of December 3, 1935.
6. Defendant's motion to vacate judgment filed December 5, 1935.
7. Order overruling defendant's motion to vacate, entered December 5, 1935; defendant excepts.
8. Notice of appeal, filed December 6, 1935.
9. Petition of United States for appeal.
10. Assignment of errors.
11. Order allowing defendant's appeal without bond.
12. Citation.
13. Praecipe for record.

Said transcript is to be prepared as required by law and the rules of the United States Circuit Court of Appeals for the Seventh Circuit.

M. L. Igoe,
MICHAEL L. IGOE,
United States Attorney.

21 [Clerk's Certificate to foregoing transcript omitted in printing.]

[Citation in usual form showing service on A. B. Leach & Co., filed Dec. 6, 1935, omitted in printing.]

22 A. B. Leach & Co., Inc. is petitioner and appellee, to show cause if any there be, why the judgment entered against appellant on November 22, 1935, by said United States District Court, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable William H. Holly, Presiding Judge of the United States District Court for the Northern District of Illinois, Eastern Division, this 6th day of December, A. D. 1935.

WILLIAM H. HOLLY,
United States District Judge.

Attest:

Clerk.

Accepted Service Due and Legal Service of the above and foregoing citation on appeal of the above entitled cause is hereby accepted and acknowledged this 6th day of December, A. D. 1935.

A. B. LEACH & CO., INC.
By E. J. BLAIR,
V. J. HEFFERNAN,
GEO. K. BOWDEN,
Its Attorneys of Record.

(Endorsed:) In the District Court of the United States. (Caption.) Citation Michael L. Igoe, United States Attorney. Filed Dec. 6, 1935. Henry W. Freeman, Clerk.

23 [Caption omitted.]

In United States Circuit Court of Appeals

5706

THE UNITED STATES OF AMERICA

vs.

A. B. LEACH & COMPANY

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division

Minute entry

May 21, 1936

Now this day come the parties by their counsel, and this cause now comes on to be heard on the printed record and briefs of counsel, and on oral arguments by Mr. E. F. McMahon, counsel for appellant, and by Mr. Vincent J. Heffernan, counsel for appellee, and the court having heard the same takes this matter under advisement.

24 In United States Circuit Court of Appeals for the Seventh Circuit

No. 5706. October term, 1935, April session, 1936

UNITED STATES OF AMERICA, APPELLANT

vs.

A. B. LEACH & CO., INC., APPELLEE

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division

Opinion

(Filed June 30, 1936)

Before EVANS and SPARKS, Circuit Judges, and LINDLEY, District Judge.

SPARKS, Circuit Judge: The Government appeals from a judgment in favor of a taxpayer ordering a refund to the latter of certain taxes held by the District Court to have been wrongly assessed and

collected under section 800, Schedule A3 of the Revenue Act of 1926, pertaining to stamp taxes.

The facts are disclosed only by the declaration to which the Government demurred, and upon which judgment was entered when it declined to plead over. The taxpayer is a firm of investment brokers. In connection with its business it organized various corporations, subscribing for the entire issue of their capital stock for the purpose of selling it to the public. Instead of having the stock issued in the firm name it caused it to be issued in the name of an employee, one Vercouter, for convenience in contemplated sales to the public. The original issue of the stock by the new corporations was duly taxed under the provisions of section 800, Schedule A2. The Commissioner then assessed an additional tax on the alleged transfer from the incorporator to its nominee, which tax the taxpayer paid under protest and then sought to recover by this action.

25 The Government first argues that the judgment entered in this case should be reversed for failure of the court to render specific findings of fact and conclusions of law, and a written opinion, in accordance with the requirements of section 7 of the Tucker Act, 28 U. S. C. A., section 764, pertaining to suits against the United States. While it would undoubtedly have been better practice to file a written opinion setting forth the findings of fact and conclusions of law, in view of the requirements of the statute, we think the failure of the court to do so under the circumstances of this case does not constitute reversible error. The Government demurred to the declaration, thereby admitting all the pleaded facts, and leaving only the issue of law to be determined. As indicated by the order entered in the cause this issue of law was developed by oral argument and briefs filed by both parties, and the merits of the claim were thereby established to the satisfaction of the trial court. He thereupon filed a brief memorandum setting out the cases, on the authority of which he concluded that the taxpayer was entitled to recover. We think that the judgment based thereon is not subject to reversal because this memorandum was not accompanied by findings of facts as to which there was absolutely no argument. The cases upon which the Government relies as authority for a contrary ruling all involved disputed issues of fact. In Dooley Lumber Co. v. United States, 63 F. (2d) 384, the Court of Appeals examined the evidence, setting much of it out in its opinion, and, upon finding that it supported the findings of fact, and that those findings supported the judgment, refused to reverse a judgment against a taxpayer. In United States v. Phillips, 24 F. (2d) 195, the Circuit Court of Appeals held that, although facts recited in the opinion of the District Court were sufficient to support its judgment on the interpretation of the Revenue Act on which it was based, when that interpretation was found erroneous by the Supreme Court in a related case, there were not sufficient facts found to enable the court to render judgment in the light of the decision of that related case,

hence the case was remanded for retrial. In United States v. Tisdale, 114 Feb. 883, the Court of Appeals stated that the findings of fact were not sufficient, even by reference to the bill of particulars, to enable the court to determine whether or not any liability accrued to the Government therefrom. In United States v. Kelly, 89
26 Fed. 946, the Court of Appeals stated that the findings entered by the District Court did not meet the requirements of the statute in that the only specific facts found related to items as to which it rejected the claim, while the facts upon which judgment was rendered were not stated at all by the court. The case had been referred to a master for taking evidence, and it appears that there were many disputed items. We think that none of these cases is authority for the reversal of the judgment under the facts here presented.

With respect to the question of law presented, the Government contends that the issue of the stock to the nominee of the taxpayer constitutes a ransfer of legal title to, or its rights to subscribe for, or to receive legal title to the certificates of stock, taxable under section 800, Schedule A 3.[1] Appellee contends, on the other hand, that there was no transfer at all, that the taxpayer retained all beneficial interest in the stock, subject to its ultimate sale to the public, and merely used its employee's name for greater convenience in effecting that ultimate sale.

We agree with appellee in its contention. We see no material distinction between the situation where a taxpayer takes title to stock in its own name and where it uses the name of an agent. Certainly this does not present the shortcut in transfer of interest held taxable in the case of Raybestos-Manhattan Co. v. United States, 296 U. S. 60. Here there is no such shortcut, for there is no transfer, either of legal title or of beneficial interest. We do not consider that the transaction whereby a principal uses the name of an agent in acquiring title to a property which it was entitled to acquire in its own name results in a transfer of the title to that property to that agent. By such a transaction the taxpayer relinquishes nothing and its agent receives nothing. The only transfer which has taken place here is from the newly organized corporation to the taxpayer in the name of the agent or nominee of the latter. The conclusion here reached is in accord with the decision of Union Trust Co. v. Heiner,
27 26 F. (2d) 391 (D. C. W. D. Pa.), with which we agree. Cf. United States v. Uhlmann Grain Co., decided by this court June 18, 1936.

Judgment affirmed.

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[1] "Capital stock, sales or transfers: On all sales, or agreements to sell, or memoranda of sales or deliveries of, or transfers of legal title to shares or certificates of stock or of profits or of interest in property * * * or to rights to subscribe for or to receive such shares or certificates, whether made upon or shown by the books of the corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale, whether entitling the holder in any manner to the benefit of such stock, interest, or rights, or not * * *."

28 In United States Circuit Court of Appeals

5706

THE UNITED STATES OF AMERICA

vs.

A. B. LEACH & COMPANY, INC.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division

Judgment

(June 30, 1936)

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof: It is now here ordered and adjudged by this court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

Recital as to issuance of mandate

And afterwards, to-wit: On the twenty-fourth day of July 1936, the mandate of this court issued to the District Court of the United States for the Northern District of Illinois, Eastern Division.

29 [Omitted.]

30 In United States Circuit Court of Appeals for the Seventh Circuit

[Title omitted.]

Appellant's motion to recall and stay the issuance of mandate

Filed Aug. 4, 1936

Now comes the United States of America, the appellant in the above-entitled cause, by Michael L. Igoe, United States Attorney, and shows to this Court that

On the 30th day of June 1936, this Court handed down its opinion in this cause affirming the decision of the United States District Court for the Northern District of Illinois;

That on the 24th day of July 1936, the mandate in this cause was issued and forwarded to the Clerk of the District Court of the United States for the Northern District of Illinois;

That the Solicitor General of the United States of America has yet under consideration the matter of the filing of petition for certiorari in this cause;

That the Attorney General of the United States of America has authorized and requested that the mandate heretofore issued in this cause be recalled, and that said mandate be stayed pending the determination of the matter of filing petition for certiorari.

Wherefore, appellant prays that the mandate of this Court heretofore issued on the 24th day of July 1936, be recalled, and that
31 said mandate be stayed and withheld until the 15th day of September 1936.

Dated this 4th day of August A. D. 1936.

M. L. Igoe,
M. L. Igoe,
United States Attorney,
Attorney for Appellant.

32 In United States Circuit Court of Appeals

[Title omitted.]

Order recalling and staying mandate

Aug. 5, 1936

On motion of counsel for the United States of America, appellant in the above entitled cause, and by agreement and consent of counsel for appellee as indicated by the signatures appearing below,

It is now here ordered that the mandate of this court heretofore issued on the 24th day of July 1936, in this cause, be, and the same is hereby, recalled.

It is now here further ordered that the mandate of this court in the above entitled cause be, and the same is hereby, stayed until the 15th day of September 1936.

33, 34 [Clerk's Certificates to foregoing transcript omitted in printing.]

35 Supreme Court of the United States

Order allowing certiorari

Filed October 19, 1936

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[Endorsement on cover:] File No. 40,871. U. S. Circuit Court of Appeals, Seventh Circuit. Term No. 331. The United States of America, petitioner, vs. A. B. Leach & Co., Inc. Petition for writ of certiorari and exhibit thereto. Filed September 1, 1936. Term No. 331 O. T. 1936.

U. S. GOVERNMENT PRINTING OFFICE: 1936